



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB4150

Introduced 10/26/2005, by Rep. Kevin Joyce - Thomas Holbrook - William Davis

#### SYNOPSIS AS INTRODUCED:

35 ILCS 640/2-9

220 ILCS 5/8-403.1

from Ch. 111 2/3, par. 8-403.1

Amends the Electricity Excise Tax Law. Deletes provisions, applicable through June 30, 2004, requiring the Department of Revenue to pay certain amounts each month into the Public Utility Fund. Beginning on July 1, 2006 and through January 31, 2009, requires the Department to pay certain amounts each month into the Municipal Economic Development Fund. Amends the Public Utilities Act. Prohibits the Illinois Commerce Commission from requiring an electric utility to purchase electricity from any qualified solid waste energy facility (QSWEF) that is owned or operated by an entity that is the subject of a bankruptcy proceeding during the pendency of that proceeding. Provides that, as of the first date on which renewable energy certificates or other saleable representations are sold by a QSWEF, with or without the electricity generated by the facility, to an electric utility or to another electric supplier that is required under State law to comply with a renewable energy portfolio standard or required by order of the Illinois Commerce Commission to meet renewable energy portfolio standard requirement, the QSWEF may not sell electricity and shall be exempt from certain requirements concerning the sale of electricity, but shall remain obligated for certain reimbursements to the State. Provides that certain provisions concerning the sale of electricity by QSWEFs shall remain in full force and effect with respect to a QSWEF that sold electricity at any time before July 1, 2006 and that does not sell or transfer renewable energy certificates or other saleable representations in order to meet the requirements of a renewable energy portfolio standard. Provides that, beginning on July 1, 2006, the Illinois Commerce Commission shall not issue any order determining that a facility is a QSWEF unless it was determined by the Illinois Commerce Commission to be a QSWEF before July 1, 2006. Effective immediately.

LRB094 14609 MKM 49559 b

1 AN ACT concerning utilities.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Electricity Excise Tax Law is amended by  
5 changing Section 2-9 as follows:

6 (35 ILCS 640/2-9)

7 Sec. 2-9. Return and payment of tax by delivering supplier.  
8 Each delivering supplier who is required or authorized to  
9 collect the tax imposed by this Law shall make a return to the  
10 Department on or before the 15th day of each month for the  
11 preceding calendar month stating the following:

12 (1) The delivering supplier's name.

13 (2) The address of the delivering supplier's principal  
14 place of business and the address of the principal place of  
15 business (if that is a different address) from which the  
16 delivering supplier engaged in the business of delivering  
17 electricity in this State.

18 (3) The total number of kilowatt-hours which the  
19 supplier delivered to or for purchasers during the  
20 preceding calendar month and upon the basis of which the  
21 tax is imposed.

22 (4) Amount of tax, computed upon Item (3) at the rates  
23 stated in Section 2-4.

24 (5) An adjustment for uncollectible amounts of tax in  
25 respect of prior period kilowatt-hour deliveries,  
26 determined in accordance with rules and regulations  
27 promulgated by the Department.

28 (5.5) The amount of credits to which the taxpayer is  
29 entitled on account of purchases made under Section 8-403.1  
30 of the Public Utilities Act.

31 (6) Such other information as the Department  
32 reasonably may require.

1           In making such return the delivering supplier may use any  
2 reasonable method to derive reportable "kilowatt-hours" from  
3 the delivering supplier's records.

4           If the average monthly tax liability to the Department of  
5 the delivering supplier does not exceed \$2,500, the Department  
6 may authorize the delivering supplier's returns to be filed on  
7 a quarter-annual basis, with the return for January, February  
8 and March of a given year being due by April 30 of such year;  
9 with the return for April, May and June of a given year being  
10 due by July 31 of such year; with the return for July, August  
11 and September of a given year being due by October 31 of such  
12 year; and with the return for October, November and December of  
13 a given year being due by January 31 of the following year.

14           If the average monthly tax liability to the Department of  
15 the delivering supplier does not exceed \$1,000, the Department  
16 may authorize the delivering supplier's returns to be filed on  
17 an annual basis, with the return for a given year being due by  
18 January 31 of the following year.

19           Such quarter-annual and annual returns, as to form and  
20 substance, shall be subject to the same requirements as monthly  
21 returns.

22           Notwithstanding any other provision in this Law concerning  
23 the time within which a delivering supplier may file a return,  
24 any such delivering supplier who ceases to engage in a kind of  
25 business which makes the person responsible for filing returns  
26 under this Law shall file a final return under this Law with  
27 the Department not more than one month after discontinuing such  
28 business.

29           Each delivering supplier whose average monthly liability  
30 to the Department under this Law was \$10,000 or more during the  
31 preceding calendar year, excluding the month of highest  
32 liability and the month of lowest liability in such calendar  
33 year, and who is not operated by a unit of local government,  
34 shall make estimated payments to the Department on or before  
35 the 7th, 15th, 22nd and last day of the month during which tax  
36 liability to the Department is incurred in an amount not less

1 than the lower of either 22.5% of such delivering supplier's  
2 actual tax liability for the month or 25% of such delivering  
3 supplier's actual tax liability for the same calendar month of  
4 the preceding year. The amount of such quarter-monthly payments  
5 shall be credited against the final tax liability of such  
6 delivering supplier's return for that month. An outstanding  
7 credit approved by the Department or a credit memorandum issued  
8 by the Department arising from such delivering supplier's  
9 overpayment of his or her final tax liability for any month may  
10 be applied to reduce the amount of any subsequent  
11 quarter-monthly payment or credited against the final tax  
12 liability of such delivering supplier's return for any  
13 subsequent month. If any quarter-monthly payment is not paid at  
14 the time or in the amount required by this Section, such  
15 delivering supplier shall be liable for penalty and interest on  
16 the difference between the minimum amount due as a payment and  
17 the amount of such payment actually and timely paid, except  
18 insofar as such delivering supplier has previously made  
19 payments for that month to the Department in excess of the  
20 minimum payments previously due.

21 If the Director finds that the information required for the  
22 making of an accurate return cannot reasonably be compiled by  
23 such delivering supplier within 15 days after the close of the  
24 calendar month for which a return is to be made, the Director  
25 may grant an extension of time for the filing of such return  
26 for a period not to exceed 31 calendar days. The granting of  
27 such an extension may be conditioned upon the deposit by such  
28 delivering supplier with the Department of an amount of money  
29 not exceeding the amount estimated by the Director to be due  
30 with the return so extended. All such deposits shall be  
31 credited against such delivering supplier's liabilities under  
32 this Law. If the deposit exceeds such delivering supplier's  
33 present and probable future liabilities under this Law, the  
34 Department shall issue to such delivering supplier a credit  
35 memorandum, which may be assigned by such delivering supplier  
36 to a similar person under this Law, in accordance with

1 reasonable rules and regulations to be prescribed by the  
2 Department.

3 The delivering supplier making the return provided for in  
4 this Section shall, at the time of making such return, pay to  
5 the Department the amount of tax imposed by this Law.

6 Until October 1, 2002, a delivering supplier who has an  
7 average monthly tax liability of \$10,000 or more shall make all  
8 payments required by rules of the Department by electronic  
9 funds transfer. The term "average monthly tax liability" shall  
10 be the sum of the delivering supplier's liabilities under this  
11 Law for the immediately preceding calendar year divided by 12.  
12 Beginning on October 1, 2002, a taxpayer who has a tax  
13 liability in the amount set forth in subsection (b) of Section  
14 2505-210 of the Department of Revenue Law shall make all  
15 payments required by rules of the Department by electronic  
16 funds transfer. Any delivering supplier not required to make  
17 payments by electronic funds transfer may make payments by  
18 electronic funds transfer with the permission of the  
19 Department. All delivering suppliers required to make payments  
20 by electronic funds transfer and any delivering suppliers  
21 authorized to voluntarily make payments by electronic funds  
22 transfer shall make those payments in the manner authorized by  
23 the Department.

24 ~~Through June 30, 2004, each month the Department shall pay~~  
25 ~~into the Public Utility Fund in the State treasury an amount~~  
26 ~~determined by the Director to be equal to 3.0% of the funds~~  
27 ~~received by the Department pursuant to this Section. Through~~  
28 ~~June 30, 2004, the remainder of all moneys received by the~~  
29 ~~Department under this Section shall be paid into the General~~  
30 ~~Revenue Fund in the State treasury.~~ Beginning on July 1, 2004,  
31 of the 3% of the funds received pursuant to this Section, each  
32 month the Department shall pay \$416,667 into the General  
33 Revenue Fund and the balance shall be paid into the Public  
34 Utility Fund in the State treasury.

35 Beginning on July 1, 2006 and through January 31, 2009,  
36 each month the Department shall pay into the Municipal Economic

1 Development Fund in the State treasury an amount equal to the  
2 difference, if any, between the total amount received by the  
3 Department under subsection (i) of Section 8-403.1 of the  
4 Public Utilities Act for the immediately preceding month and  
5 the total amount received by the Department under subsection  
6 (i) of Section 8-403.1 of the Public Utilities Act for the  
7 month in calendar year 2002 corresponding with the immediately  
8 preceding month. After making the payments required under this  
9 paragraph, the remainder of all moneys received by the  
10 Department under Section 8-403.1 of the Public Utilities Act  
11 shall be paid into the General Revenue Fund in the State  
12 treasury.

13 (Source: P.A. 92-492, eff. 1-1-02; 93-839, eff. 7-30-04.)

14 Section 10. The Public Utilities Act is amended by changing  
15 Section 8-403.1 as follows:

16 (220 ILCS 5/8-403.1) (from Ch. 111 2/3, par. 8-403.1)

17 Sec. 8-403.1. Electricity purchased from qualified solid  
18 waste energy facility; tax credit; distributions for economic  
19 development.

20 (a) It is hereby declared to be the policy of this State to  
21 encourage the development of alternate energy production  
22 facilities in order to conserve our energy resources and to  
23 provide for their most efficient use.

24 (b) For the purpose of this Section and Section 9-215.1,  
25 "qualified solid waste energy facility" means a facility  
26 determined by the Illinois Commerce Commission to qualify as  
27 such under the Local Solid Waste Disposal Act, to use methane  
28 gas generated from landfills as its primary fuel, and to  
29 possess characteristics that would enable it to qualify as a  
30 cogeneration or small power production facility under federal  
31 law.

32 (c) In furtherance of the policy declared in this Section,  
33 the Illinois Commerce Commission shall require electric  
34 utilities to enter into long-term contracts to purchase

1 electricity from qualified solid waste energy facilities  
2 located in the electric utility's service area, for a period  
3 beginning on the date that the facility begins generating  
4 electricity and having a duration of not less than 10 years in  
5 the case of facilities fueled by landfill-generated methane, or  
6 20 years in the case of facilities fueled by methane generated  
7 from a landfill owned by a forest preserve district. The  
8 purchase rate contained in such contracts shall be equal to the  
9 average amount per kilowatt-hour paid from time to time by the  
10 unit or units of local government in which the electricity  
11 generating facilities are located, excluding amounts paid for  
12 street lighting and pumping service.

13 (d) Whenever a public utility is required to purchase  
14 electricity pursuant to subsection (c) above, it shall be  
15 entitled to credits in respect of its obligations to remit to  
16 the State taxes it has collected under the Electricity Excise  
17 Tax Law equal to the amounts, if any, by which payments for  
18 such electricity exceed (i) the then current rate at which the  
19 utility must purchase the output of qualified facilities  
20 pursuant to the federal Public Utility Regulatory Policies Act  
21 of 1978, less (ii) any costs, expenses, losses, damages or  
22 other amounts incurred by the utility, or for which it becomes  
23 liable, arising out of its failure to obtain such electricity  
24 from such other sources. The amount of any such credit shall,  
25 in the first instance, be determined by the utility, which  
26 shall make a monthly report of such credits to the Illinois  
27 Commerce Commission and, on its monthly tax return, to the  
28 Illinois Department of Revenue. Under no circumstances shall a  
29 utility be required to purchase electricity from a qualified  
30 solid waste energy facility at the rate prescribed in  
31 subsection (c) of this Section if such purchase would result in  
32 estimated tax credits that exceed, on a monthly basis, the  
33 utility's estimated obligation to remit to the State taxes it  
34 has collected under the Electricity Excise Tax Law. The owner  
35 or operator shall negotiate facility operating conditions with  
36 the purchasing utility in accordance with that utility's posted

1 standard terms and conditions for small power producers. If the  
2 Department of Revenue disputes the amount of any such credit,  
3 such dispute shall be decided by the Illinois Commerce  
4 Commission. Whenever a qualified solid waste energy facility  
5 has paid or otherwise satisfied in full the capital costs or  
6 indebtedness incurred in developing and implementing the  
7 qualified facility, the qualified facility shall reimburse the  
8 Public Utility Fund and the General Revenue Fund in the State  
9 treasury for the actual reduction in payments to those Funds  
10 caused by this subsection (d) in a manner to be determined by  
11 the Illinois Commerce Commission and based on the manner in  
12 which revenues for those Funds were reduced.

13 (e) The Illinois Commerce Commission shall not require an  
14 electric utility to purchase electricity from any qualified  
15 solid waste energy facility which is owned or operated by: (i)  
16 an entity that is primarily engaged in the business of  
17 producing or selling electricity, gas, or useful thermal energy  
18 from a source other than one or more qualified solid waste  
19 energy facilities or (ii) an entity that is the subject of a  
20 bankruptcy proceeding, during the pendency of that proceeding,  
21 including any qualified solid waste energy facility that is the  
22 subject of a bankruptcy proceeding on the effective date of  
23 this amendatory Act of the 94th General Assembly.

24 (f) This Section does not require an electric utility to  
25 construct additional facilities unless those facilities are  
26 paid for by the owner or operator of the affected qualified  
27 solid waste energy facility.

28 (g) The Illinois Commerce Commission shall require that:  
29 (1) electric utilities use the electricity purchased from a  
30 qualified solid waste energy facility to displace electricity  
31 generated from nuclear power or coal mined and purchased  
32 outside the boundaries of the State of Illinois before  
33 displacing electricity generated from coal mined and purchased  
34 within the State of Illinois, to the extent possible, and (2)  
35 electric utilities report annually to the Commission on the  
36 extent of such displacements.

1 (h) Nothing in this Section is intended to cause an  
2 electric utility that is required to purchase power hereunder  
3 to incur any economic loss as a result of its purchase. All  
4 amounts paid for power which a utility is required to purchase  
5 pursuant to subparagraph (c) shall be deemed to be costs  
6 prudently incurred for purposes of computing charges under  
7 rates authorized by Section 9-220 of this Act. Tax credits  
8 provided for herein shall be reflected in charges made pursuant  
9 to rates so authorized to the extent such credits are based  
10 upon a cost which is also reflected in such charges.

11 (i) Beginning in February 1999 and through January 2009,  
12 each qualified solid waste energy facility that sells  
13 electricity to an electric utility at the purchase rate  
14 described in subsection (c) shall file with the Department of  
15 Revenue on or before the 15th of each month a form, prescribed  
16 by the Department of Revenue, that states the number of  
17 kilowatt hours of electricity for which payment was received at  
18 that purchase rate from electric utilities in Illinois during  
19 the immediately preceding month. This form shall be accompanied  
20 by a payment from the qualified solid waste energy facility in  
21 an amount equal to six-tenths of a mill (\$0.0006) per kilowatt  
22 hour of electricity stated on the form. Beginning on the  
23 effective date of this amendatory Act of the 92nd General  
24 Assembly, a qualified solid waste energy facility must file the  
25 form required under this subsection (i) before the 15th of each  
26 month regardless of whether the facility received any payment  
27 in the previous month. Payments received by the Department of  
28 Revenue shall be deposited into the Municipal Economic  
29 Development Fund, a trust fund created outside the State  
30 treasury. The State Treasurer may invest the moneys in the Fund  
31 in any investment authorized by the Public Funds Investment  
32 Act, and investment income shall be deposited into and become  
33 part of the Fund. Moneys in the Fund shall be used by the State  
34 Treasurer as provided in subsection (j). The obligation of a  
35 qualified solid waste energy facility to make payments into the  
36 Municipal Economic Development Fund shall terminate upon

1 either: (1) expiration or termination of a facility's contract  
2 to sell electricity to an electric utility at the purchase rate  
3 described in subsection (c); or (2) entry of an enforceable,  
4 final, and non-appealable order by a court of competent  
5 jurisdiction that Public Act 89-448 is invalid. Payments by a  
6 qualified solid waste energy facility into the Municipal  
7 Economic Development Fund do not relieve the qualified solid  
8 waste energy facility of its obligation to reimburse the Public  
9 Utility Fund and the General Revenue Fund for the actual  
10 reduction in payments to those Funds as a result of credits  
11 received by electric utilities under subsection (d).

12 A qualified solid waste energy facility that fails to  
13 timely file the requisite form and payment as required by this  
14 subsection (i) shall be subject to penalties and interest in  
15 conformance with the provisions of the Illinois Uniform Penalty  
16 and Interest Act.

17 Every qualified solid waste energy facility subject to the  
18 provisions of this subsection (i) shall keep and maintain  
19 records and books of its sales pursuant to subsection (c),  
20 including payments received from those sales and the  
21 corresponding tax payments made in accordance with this  
22 subsection (i), and for purposes of enforcement of this  
23 subsection (i) all such books and records shall be subject to  
24 inspection by the Department of Revenue or its duly authorized  
25 agents or employees.

26 When a qualified solid waste energy facility fails to file  
27 the form or make the payment required under this subsection  
28 (i), the Department of Revenue, to the extent that it is  
29 practical, may enforce the payment obligation in a manner  
30 consistent with Section 5 of the Retailers' Occupation Tax Act,  
31 and if necessary may impose and enforce a tax lien in a manner  
32 consistent with Sections 5a, 5b, 5c, 5d, 5e, 5f, 5g, and 5i of  
33 the Retailers' Occupation Tax Act. No tax lien may be imposed  
34 or enforced, however, unless a qualified solid waste energy  
35 facility fails to make the payment required under this  
36 subsection (i). Only to the extent necessary and for the

1 purpose of enforcing this subsection (i), the Department of  
2 Revenue may secure necessary information from a qualified solid  
3 waste energy facility in a manner consistent with Section 10 of  
4 the Retailers' Occupation Tax Act.

5 All information received by the Department of Revenue in  
6 its administration and enforcement of this subsection (i) shall  
7 be confidential in a manner consistent with Section 11 of the  
8 Retailers' Occupation Tax Act. The Department of Revenue may  
9 adopt rules to implement the provisions of this subsection (i).

10 For purposes of implementing the maximum aggregate  
11 distribution provisions in subsections (j) and (k), when a  
12 qualified solid waste energy facility makes a late payment to  
13 the Department of Revenue for deposit into the Municipal  
14 Economic Development Fund, that payment and deposit shall be  
15 attributed to the month and corresponding quarter in which the  
16 payment should have been made, and the Treasurer shall make  
17 retroactive distributions or refunds, as the case may be,  
18 whenever such late payments so require.

19 (j) The State Treasurer, without appropriation, must make  
20 distributions immediately after January 15, April 15, July 15,  
21 and October 15 of each year, up to maximum aggregate  
22 distributions of \$500,000 for the distributions made in the 4  
23 quarters beginning with the April distribution and ending with  
24 the January distribution, from the Municipal Economic  
25 Development Fund to each city, village, or incorporated town  
26 that has within its boundaries an incinerator that: (1) uses  
27 or, on the effective date of Public Act 90-813, used municipal  
28 waste as its primary fuel to generate electricity; (2) was  
29 determined by the Illinois Commerce Commission to qualify as a  
30 qualified solid waste energy facility prior to the effective  
31 date of Public Act 89-448; and (3) commenced operation prior to  
32 January 1, 1998. Total distributions in the aggregate to all  
33 qualified cities, villages, and incorporated towns in the 4  
34 quarters beginning with the April distribution and ending with  
35 the January distribution shall not exceed \$500,000. The amount  
36 of each distribution shall be determined pro rata based on the

1 population of the city, village, or incorporated town compared  
2 to the total population of all cities, villages, and  
3 incorporated towns eligible to receive a distribution.  
4 Distributions received by a city, village, or incorporated town  
5 must be held in a separate account and may be used only to  
6 promote and enhance industrial, commercial, residential,  
7 service, transportation, and recreational activities and  
8 facilities within its boundaries, thereby enhancing the  
9 employment opportunities, public health and general welfare,  
10 and economic development within the community, including  
11 administrative expenditures exclusively to further these  
12 activities. These funds, however, shall not be used by the  
13 city, village, or incorporated town, directly or indirectly, to  
14 purchase, lease, operate, or in any way subsidize the operation  
15 of any incinerator, and these funds shall not be paid, directly  
16 or indirectly, by the city, village, or incorporated town to  
17 the owner, operator, lessee, shareholder, or bondholder of any  
18 incinerator. Moreover, these funds shall not be used to pay  
19 attorneys fees in any litigation relating to the validity of  
20 Public Act 89-448. Nothing in this Section prevents a city,  
21 village, or incorporated town from using other corporate funds  
22 for any legitimate purpose. For purposes of this subsection,  
23 the term "municipal waste" has the meaning ascribed to it in  
24 Section 3.290 of the Environmental Protection Act.

25 (k) If maximum aggregate distributions of \$500,000 under  
26 subsection (j) have been made after the January distribution  
27 from the Municipal Economic Development Fund, then the balance  
28 in the Fund shall be refunded to the qualified solid waste  
29 energy facilities that made payments that were deposited into  
30 the Fund during the previous 12-month period. The refunds shall  
31 be prorated based upon the facility's payments in relation to  
32 total payments for that 12-month period.

33 (l) Beginning January 1, 2000, and each January 1  
34 thereafter, each city, village, or incorporated town that  
35 received distributions from the Municipal Economic Development  
36 Fund, continued to hold any of those distributions, or made

1 expenditures from those distributions during the immediately  
2 preceding year shall submit to a financial and compliance and  
3 program audit of those distributions performed by the Auditor  
4 General at no cost to the city, village, or incorporated town  
5 that received the distributions. The audit should be completed  
6 by June 30 or as soon thereafter as possible. The audit shall  
7 be submitted to the State Treasurer and those officers  
8 enumerated in Section 3-14 of the Illinois State Auditing Act.  
9 If the Auditor General finds that distributions have been  
10 expended in violation of this Section, the Auditor General  
11 shall refer the matter to the Attorney General. The Attorney  
12 General may recover, in a civil action, 3 times the amount of  
13 any distributions illegally expended. For purposes of this  
14 subsection, the terms "financial audit," "compliance audit",  
15 and "program audit" have the meanings ascribed to them in  
16 Sections 1-13 and 1-15 of the Illinois State Auditing Act.

17 (m) On and after the effective date of this amendatory Act  
18 of the 94th General Assembly, as of the first date on which  
19 renewable energy certificates or other saleable  
20 representations are sold or transferred by a qualified solid  
21 waste energy facility, with or without the electricity  
22 generated by the facility, to an electric utility or to another  
23 electric supplier that is required under State law to comply  
24 with a renewable energy portfolio standard or that is required  
25 by order of the Illinois Commerce Commission to meet a  
26 renewable energy portfolio standard requirement, that  
27 qualified solid waste energy facility may not sell electricity  
28 pursuant to this Section and shall be exempt from the  
29 requirements of subsections (a) through (l) of this Section,  
30 except that it shall remain obligated for any reimbursements  
31 required under subsection (d) of this Section. All of the  
32 provisions of this Section shall remain in full force and  
33 effect with respect to any qualified solid waste energy  
34 facility that sold electric energy pursuant to this Section at  
35 any time before July 1, 2006 and that does not sell or transfer  
36 renewable energy certificates or other saleable

1 representations to meet the requirements of a renewable energy  
2 portfolio standard.

3 (n) Notwithstanding any other provision of law to the  
4 contrary, beginning on July 1, 2006, the Illinois Commerce  
5 Commission shall not issue any order determining that a  
6 facility is a qualified solid waste energy facility unless the  
7 qualified solid waste energy facility was determined by the  
8 Illinois Commerce Commission to be a qualified solid waste  
9 energy facility before July 1, 2006.

10 (Source: P.A. 91-901, eff. 1-1-01; 92-435, eff. 8-17-01;  
11 92-574, eff. 6-26-02.)

12 Section 99. Effective date. This Act takes effect upon  
13 becoming law.